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Fliesler Meyer LLP 650 California Street 14th Floor San Francisco, CA 94108			EXAMINER SHERR, CRISTINA O	
			ART UNIT 3685	PAPER NUMBER
			MAIL DATE 10/31/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. This communication is in response to Applicant's Amendment filed July 10, 2008. Claims 1-2, 5-9, 12, 13, 16-20, and 29-30 are currently pending in this case.

Response to Arguments

2. Applicant's arguments filed July 10, 2008 have been fully considered but they are not persuasive.

3. Applicant argues, regarding claim 1, that nothing in the cited reference discloses, teaches or suggests allowing a client application to "access a set of resources of various resource types, including application server and transaction processing systems."

4. Examiner respectfully disagrees. We note first that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). In this case we note that a "system is an apparatus." *Ex parte Fressola*, 27 USPQ2d 1608, 1611 (B.P.A.I. 1993) (citations omitted). Additionally, "[c]laims in apparatus form

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conventionally fall into the 35 U.S.C. §101 statutory category of a ‘machine.’” *Ex parte Donner*, 53 USPQ2d 1699, 1701 (B.P.A.I.1999)(unpublished), (Paper No. 34, page 5, issued as U.S. Patent 5,999,907). Therefore, it is the Examiner’s position that Applicant’s system claims are “product,” “apparatus,” or more specifically, “machine” claims. We further note that accessing “a set of resources of various resource types, including application server and transaction processing system” refers to what the apparatus does rather than what it is and thus does not serve to further distinguish the claim from the prior art. Additionally, language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. MPEP §2106 II C. It has been held that actions that may or may not be done are indefinite and does not distinguish the claim from the prior art. *In re Collier*, 158 USPQ 266 (CCPA 1968). In claim 1, “additional plug-in may be included . . .”. Thus, the plug-in are optional and do not further distinguish the claim from the prior art.

5. Also, Kampe discloses the claimed invention except for wherein additional plugins may be included in the resource interface for other resource types. Note that Kampe does provide for a variety of plug-in components, at, e.g., col 5 ln 35-45. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to wherein additional plugins may be included in the resource interface for other resource types, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 and wherein adding additional computers with cluster servers and

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resource interfaces operating thereon can extend the system for example Col. 5, lines 45-60. Further, *KSR* forecloses Appellant's argument that a specific teaching is required for a finding of obviousness. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

6. With respect to claims 12 and 29, applicant argues that nothing in the cited reference discloses, teaches or suggests allowing a client application to "access a set of resources of various resource types, including application server and transaction processing systems."

7. Examiner respectfully disagrees. Kampe discloses the claimed invention except for wherein additional plugins may be included in the resource interface for other resource types. Note that Kampe does provide for a variety of plug-in components, at, e.g., col 5 ln 35-45. It would have been obvious to one having ordinary skill in the art at the time of the invention was made that additional plug-in may be included in the resource interface for other resource types, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 and wherein adding additional computers with cluster servers and resource interfaces operating thereon can extend the system for example Col. 5, lines 45-60.

8. Additionally, language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. MPEP §2106 II C. It has been held that actions that may or may not be done are indefinite and does not distinguish the claim from the prior

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art. *In re Collier*, 158 USPQ 266 (CCPA 1968). In claim 12, "additional plug-ins may be included" Thus, the plug-ins are optional and the step does not actually take place.

9. Further, *KSR* forecloses Appellant's argument that a specific teaching is required for a finding of obviousness. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-2, 5-10, 12, 13, 16-21 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kampe et al., U.S. Patent 6,854,069 [Kampe].

12. Regarding claims 1, 12, and 29-30:

13. The recitation, "A system/ method for providing a high availability clustering ..., A system/method for providing resource groups in a cluster ..., and A system/method for high availability clustering,..." has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a method, a system, an apparatus, etc. and the portion of the claim following the preamble is a self-contained description of the method or the system, etc., not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951)

14. Kampe discloses:

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a computer that allows a user or application to access a set of resources of various resource types, including application servers, said resources available at said computer or at another computer; for example Fig. 1, Col. 4-5, lines 55-67 and 1-26 respectively.

a cluster server that operates at said computer and that allows access to said set of resources; for example Col. 8, lines 16-50.

a resource interface provided by said cluster server that allows the cluster server to communicate with said set of resources and a plurality of plugins that are plugged into the resource interface to provide a mapping between the system's resource management functions and any resource type-specific functionality, wherein each one of said plurality of plugins provides access to a pool of resources of a particular resource type, and wherein each pool of resources includes a plurality of resources of that particular type for example Col. 5, lines 35-40, Col 6, lines 35-45.

15. Kampe discloses the claimed invention except for wherein additional plugins may be included in the resource interface for other resource types. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to wherein additional plugins may be included in the resource interface for other resource types, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 and wherein adding additional computers with cluster servers and resource interfaces operating thereon can extend the system for example Col. 5, lines 45-60.

16. Regarding claims 2 and 13:

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17. Kampe further discloses wherein each of said cluster servers includes a heartbeat interface that provides heartbeat information to other cluster servers at said other application servers. for example Col. 13, lines 23-33.

18. Regarding claims 5 and 16:

19. Kampe further discloses wherein the system includes a cluster administration utility for accessing and administering the cluster server using remote method invocation calls. Col. 20, lines 15-23.

20. Regarding claims 6 and 17:

21. Kampe further discloses wherein each resource has a resource type associated with it. Col. 20, lines 15-23.

22. Regarding claims 7 and 18:

23. Kampe further discloses wherein resources are the object instances of their respective resource types. Col. 20, lines 15-23.

24. Regarding claims 8 and 19:

25. Kampe further discloses wherein a resource is any of a computer, Internet protocol address, disk, database, or file system or application. Col. 20, lines 15-23.

26. Regarding claims 9 and 20:

27. Kampe further discloses wherein the cluster server defines resource groups that include clusters of resources. Col. 9, lines 15-25.

28. Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are

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applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Conclusion

29. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

30. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CRISTINA OWEN SHERR whose telephone number is (571)272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

32. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin L. Hewitt, II can be reached on (571)272-6709. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

33. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Jalatee Worjloh/

Primary Examiner, Art Unit 3685